

## **REMARKS**

The present paper is in response to the Examiner's Office Action mailed January, 11, 2007. Claims 1, 3-4, 10, 20-24, 26, 27, and 31-37 were rejected under 35 U.S.C. 102(e) as being purportedly anticipated by United States Patent No. 6,507,923 to Wall et al. (hereinafter referred to as "Wall"). In addition, Claims 2, 6, 7, 9, 11, 25, and 28-30 were rejected under 35 U.S.C. 103(a) as being obvious over Wall in light of various other references cited in the Office Action. Claims 5 and 12-19 were allowed. By this paper, Claims 1, 20, 34, and 37 are amended, no claims are added and Claim 5 is cancelled, such that Claims 1-4, 6-7 and 9-37 remain pending for examination.

Reconsideration and allowance for the above-identified application is now respectfully requested in light of these remarks and the accompanying amendments. For the convenience and reference of the Examiner, the remarks of Applicant are presented in the order in which the corresponding issues were raised in the Office Action.

### **I. General Considerations**

Applicant notes that the remarks and amendments presented herein have been made merely to clarify the claimed embodiments from elements purported by the Office Action to be taught by the cited references. Such remarks, or a lack of remarks, and amendments are not intended to constitute, and should not be construed as, an acquiescence, on the part of the Applicant: as to the purported teachings or prior art status of the cited references; as to the characterization of the cited references advanced by the Office Action; as to whether it is proper to combine any cited references; or as to any other assertions, allegations or characterizations made by the Office Action at any time in this case. Applicant reserves the right to challenge the purported teaching and prior art status of the cited references, as well as whether it is proper to combine the cited references, at any appropriate time.

In addition, the remarks herein do not constitute, nor are they intended to be, an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed herein are presented solely by way of example. Consistent with the foregoing, the discussion herein is not intended, and should not be construed, to prejudice or foreclose contemporaneous or future consideration, by the Applicant,

of additional or alternative distinctions between the claims of the present application and the references cited by the Office Action, and/or the merits of additional or alternative arguments.

**II. Rejection Under 35 U.S.C. § 112, Second Paragraph**

The Examiner rejects Claim 5 under 35 U.S.C. § 112, Second Paragraph for indefiniteness on the grounds that Claim 5 includes insufficient antecedent basis. Inasmuch as Applicant has cancelled Claim 5, this rejection is now moot and should be withdrawn.

**III. Allowed Subject Matter**

The Examiner's allowance of Claims 12-19 is appreciated. Applicant wishes to thank the Examiner for the careful review and allowance of those claims.

The Applicant submits the following comments concerning the Examiner's statements of reasons for the indication of allowable subject matter in the Office Action. Applicant agrees with the Examiner that the claimed invention of Claims 12-19 is patentable over the prior art, but respectfully disagrees with the Examiners statement of reasons for allowance as set forth in Office Action. Applicant submits that it is the claim as a whole, rather than any particular limitation, that makes each of the claims allowable. No single limitation should be construed as the reason for allowance of a claim because it is each of the elements of the claim that makes it allowable. Therefore, Applicant does not concede that the reasons for allowable subject matter given by the Examiner are the only reasons that make, or would make, the claims allowable and do not make any admission or concession concerning the Examiner's statement in the Office Action.

The Examiner has indicated that Claim 5 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In response, Applicant has rewritten former independent Claim 1 so as to include all of the limitations of the former Claim 5. In particular, the scope of presently amended independent Claim 1 (i.e., the scope of former Claim 5) has not been narrowed in any way so as to overcome any prior art, but has merely been rewritten in an independent format. As acknowledged by the Examiner, that claim is patentably distinct from the prior art, and is now in a condition for allowance.

Moreover, for at least the same reason, claims now depending from Claim 1 – namely, Claims 2-4, 6-7, and 9-11– are also in a condition for allowance.

#### **IV. Rejection Under 35 U.S.C. §102(a/b/e)**

In section 3 of the Office Action, Claims 1, 3-4, 10, 20-24, 26, 27, and 31-37 were rejected under 35 U.S.C. § 102(e) as being unpatentable over Wall. Applicant respectfully notes that a claim is anticipated under 35 U.S.C. § 102(a), (b), or (e) only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Further, the identical invention must be shown in as complete detail as is contained in the claim. Finally, the elements must be arranged as required by the claim. *MPEP* § 2131. Further, Applicant also notes that “[i]n determining that quantum of prior art disclosure which is necessary to declare an applicant’s invention ‘not novel’ or ‘anticipated’ within section 102, the stated test is whether a reference contains an ‘enabling disclosure.’” *MPEP* § 2121.01. In other words, a cited reference must be enabled with respect to each claim limitation.

As mentioned above, Applicant has amended independent Claim 1 to include the limitations of allowed dependent Claim 5. Accordingly, independent Claim 1 is now in a condition of allowance and the anticipation rejection should be withdrawn.

Independent Claims 20, 34, and 37 have been amended to included similar limitations as amended independent Claim 1. Accordingly, for at least the reason that Wall does not teach or disclose that the first and second network diagnostic functions are selected from at least an analyzer, a jammer, a generator, or a bit error rate tester as admitted by the Examiner in relation to former dependent Claim 5, the rejections of independent Claims 20, 34, and 37 should also be withdrawn. Claims 3-4, 10, 21-24, 26, 27, 31-33, and 35-36 variously depend from Claims 1, 20, and 34 and are thus patentable for at least the reasons Claims 1, 20 and 34 are patentable. Accordingly, the rejections of these claims should also be withdrawn.

#### **III. Rejection Under 35 U.S.C. § 103**

The Office Action rejected Claims 2, 6-7, 9, 11, 25, and 28-30 under 35 U.S.C. 103(a) as being obvious over Wall in light of various other references cited in the Office Action. Applicant respectfully notes that Claims 2, 6-7, 9, 11, 25, and 28-30 all variously depend from

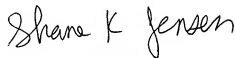
Claims 1 and 20 and are thus patentable for at least the reasons discussed above that Claims 1 and 20 are patentable. Accordingly, the rejections to these claims should be withdrawn.

### **CONCLUSION**

In view of the foregoing, Applicant believes the claims as amended or presently pending are in allowable form and that every issue raised by the Office Action has been addressed. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, or which may be overcome by an Examiner's Amendment, the Examiner is requested to contact the undersigned attorneys.

Dated this 9th day of April, 2007.

Respectfully submitted,



ERIC L. MASCHOFF  
Registration No. 36,596  
SHANE K. JENSEN  
Registration No. 55,301  
Attorneys for Applicant  
Customer No. 022913  
Telephone: (801) 533-9800

W:\15436\225.1\ML0000005481V001.doc